DOCKET FILE COPY ORIGINAL

Before the
Federal Communications Commission
Washington, D.C. 20554

RECEIVED

FEB 26 2001

FEDERAL COMMUNICATIONS COMMISSION
OFFICE OF THE SECRETARY

In the Matter of	)	
	)	
Federal-State Joint Board on Universal Service	)	CC Docket No. 96-45
	)	
Comments on the Recommended Decision of the Joint Board Concerning the Rural Task Force Recommendation	)	

COMMENTS OF CENTURYTEL, INC.

CenturyTel, Inc. ("CenturyTel"), through its attorneys, hereby offers the following comments on the above-captioned Further Notice of Proposed Rulemaking ("Further Notice") released January 12, 2001.[1]

I. Introduction

CenturyTel supports the recommendation of the Rural Task Force and urges the Commission to continue to move forward quickly to implement universal service reform for rural telephone companies. At the request of the Commission and the Federal-State Joint Board on Universal Service ("Joint Board"), the Rural Task Force has studied the challenges and opportunities facing rural telephone companies at length, and has developed thoughtful, balanced, and creative solutions. CenturyTel specifically urges the Commission to adopt a safety valve mechanism that would provide additional support to carriers that make meaningful post-transaction investments in acquired exchanges. This mechanism carefully balances the need to protect the universal service fund, while offering salvation to otherwise underserved rural exchanges that today do not receive sufficient universal service support.

1 *Federal-State Joint Board on Universal Service*, CC Docket No. 96-45, Further Notice of Proposed Rulemaking, FCC 01-8 (rel. Jan. 12, 2001).

CenturyTel, headquartered in Monroe, Louisiana, is a leading provider of integrated communications services to rural markets. CenturyTel provides a variety of high-quality communications services to more than 2.8 million customers in rural communities in 21 states, including local exchange and advanced services, wireless service, long distance, security monitoring, information services, and broadband and dial-up Internet access. CenturyTel has grown rapidly over the past several years, largely through purchases of rural exchanges from larger carriers.[2] Today, CenturyTel's rural telephone companies provide local exchange telephone service to 1.7 million access lines, but approximately half of its exchanges have fewer than 1,000 access lines each. Very few of its exchanges have greater than 10,000 access lines. All of CenturyTel's operating companies meet the statutory definition of a "rural telephone company."[3]

II. Rural Carrier and Interstate Access Charges and Universal Service Mechanisms Must Be Reformed Together.

Today, rural telephone companies critically need access charge and universal service reform. The Telecommunications Act of 1996 (1996 Act) required that universal service support for all carriers be, specific, predictable, explicit and, most importantly, sufficient to ensure reasonably comparable services and rates between urban and rural areas. The Commission has proceeded since 1996 with justified caution as it implements these statutory goals for rural telephone companies. Precipitous reform of the universal service mechanisms supporting these carriers could have had devastating and long-lasting effects.

Reform, though, is critically-needed. Universal service support that is geographically-averaged across entire study areas fails to provide sufficient support to a rural carrier's highest-cost lines. Additionally, geographically-averaged rates facilitate "cream-

---

[2] *See, e.g., CenturyTel of Central Wisconsin and GTE North Incorporated*, CC Docket No. 96-45, Order, DA 00-1863 (Com. Car. Bur. Acct'g Pol. Div. rel. Aug 16, 2000).

skimming" and cannot be sustained as competition develops. If competitors win a rural carrier's lowest-cost business lines, its residential customers take a double hit as the carrier loses a disproportionately large share of both its revenue and its universal service support. This result is fundamentally at odds with the Commission's universal service goals.

The RTF Plan addresses these risks by (1) deaveraging universal service support payments; (2) recommending principles to guide the Commission in creating a "High Cost Fund III" to convert support implicit in interstate access charges to explicit; and (3) reinitializing the rural carrier high cost loop support as if the indexed cap had not been in effect for the year 2000 and re-indexing the fund on a going-forward basis using the rural growth factor that accounts for both inflation and line growth. These actions are important steps toward truly sustainable universal service that will ensure that rural Americans continue to enjoy access to high-quality, affordable telecommunications services.

III. The Commission Should Adopt a Safety Valve on Support for Acquired Exchanges.

The most important change to the Commission's current rules that the RTF proposes, however, is the safety valve on universal service support provided to the purchaser of rural exchanges. CenturyTel has purchased hundreds of thousands of such lines from larger carriers. These lines are often the highest-cost portions of other carriers' study areas and, correspondingly, the areas where the selling carrier has invested least. When it purchases rural exchanges from larger carriers, CenturyTel invests heavily to modernize the exchange facilities and to bring new services to its acquired customers. Often, CenturyTel is the first carrier ever to offer these customers such common services as fiber optic facilities, digital switching, voice mail, caller ID, local dialup Internet access, and DSL. In one recent example, CenturyTel

---

[3] 47 U.S.C. § 153 (37).

conservatively estimated that it would invest over $15 million in the first three years to upgrade facilities serving approximately 85,000 access lines, an investment of over $175 *per line*.[4]

This type of investment, while welcomed by both the federal and state regulatory commissions, will not occur unless federal or state rules offer a reasonable opportunity for recovery of the associated costs. State commissions often balk at local rate increases to reflect the improved services. Interexchange carriers often balk at increases in intrastate or interstate access charges.[5] And federal universal service support is constrained under section 54.305 of the Commission's rules.

CenturyTel therefore urges the Commission to (1) adopt a safety valve as proposed in the RTF Plan that would protect universal service to rural consumers; (2) define "meaningful investment" that would trigger the safety valve as post-acquisition net annual increases in telecommunications plant in service assets allocated to regulated services; and (3) eliminate the study area waiver process for sales and purchases of exchanges as unnecessary.

A. The Safety Valve Will Protect Universal Service to Rural Consumers.

Section 54.305, as currently written, is beginning to impede, rather than promote, the Commission's universal service goals. Section 54.305 of the Commission's rules was put into place as a stopgap measure to prevent universal service support payments from "influenc[ing] unduly a carrier's decision to purchase exchanges from other carriers."[6] This rule was never intended as a long-term solution and the Joint Board recently expressed its "general

---

4 *See Kendall Telephone, Inc., and Wisconsin Bell, Inc.*, CC Docket No. 96-45, Joint Petition for Waiver (filed May 13, 1998), at 11-12.

5 *See, e.g., Joint Petition for Waiver of the Definition of "Study Area" Contained in the Appendix to Part 36 of the Commission's Rules (Glossary) of CenturyTel of Northwest Arkansas, LLC, CenturyTel of Central Arkansas, and GTE Arkansas Inc., GTE Midwest Inc., and GTE Southwest Inc.*, CC Docket No. 96-45, AT&T Opposition to CenturyTel/GTE Joint Petition for Waiver, filed Mar. 17, 2000, at 7.

concern" that the rule "has negative consequences, at least with regard to transfers of exchanges between carriers that are not both receiving support based on the forward-looking mechanism."[7]

Section 54.305 often denies rural telephone companies universal service support that is sufficient to achieve the affordable and reasonably comparable rates *and services* mandated by the 1996 Act. Without sufficient support, purchasing carriers are unable to invest in upgraded loop plant, switching facilities, advanced telecommunications services, and other telecommunications infrastructure. Because the costs of these facilities can be substantial, as the Rural Task Force realized, "customers in high cost rural exchanges involved in sale/transfer transactions should not be 'doomed' to poor service because they live in exchanges that have been involved in sale/transfer transaction where the previous owner had limited access to universal service support funds."[8]

Rather, under the mandate of section 254, federal universal service mechanisms must recognize, reward, and encourage such investments. Without such investments, service to rural areas will not remain "reasonably comparable" to those available in urban areas. Moreover, even when such investment takes place, rural and urban rates cannot remain "reasonably comparable" without universal service mechanisms to support it.

B. "Meaningful Investment" Should Be Broadly Defined.

"Meaningful investment" triggering the safety valve support should include all post-acquisition net annual increases in interstate telecommunications plant allocated to regulated services. Such a definition would directly advance both of the Commission's goals. First, with

---

6 *Federal-State Joint Board on Universal Service*, Report and Order, 12 FCC Rcd 8776, 8942 (1997) (subsequent history omitted).

7 *Federal-State Joint Board on Universal Service*, CC Docket No. 96-45, Recommended Decision, FCC 00J-1 (Jt. Bd. rel. June 30, 2000), at para. 20.

8 *Federal-State Joint Board on Universal Service*, CC Docket No. 96-45, Rural Task Force Recommendation to the Federal-State Joint Board on Universal Service ("*RTF Plan*") (Rural Task Force rel. Sept. 29, 2000), at 27.

universal service support to non-rural carriers now largely explicit and deaveraged, any support that the exchanges do receive is likely to be targeted to the study area's highest-cost lines, which are most often those offered for sale. Second, by providing additional support for net new investment by the purchasing carrier, the RTF Plan will encourage rural investment, relieve pressure on local rates, and speed the delivery of new and improved services to rural consumers.

The Commission should clarify, however, three aspects of the safety valve mechanism. First, the Commission should clarify that the safety valve applies to all exchanges currently subject to limits on universal service support under section 54.305.[9] Just as the Commission should not "doom" customers whose exchanges are the subject of future sales to poor service as a result of limited universal service support, the Commission should not "doom" customers whose exchanges have been sold since section 54.305 was adopted in 1997 to such a fate. Furthermore, if the Commission were to apply the safety valve only to future sales, that action alone would greatly influence carrier decisions to buy and sell exchanges, contrary to the fundamental policy that led to the adoption of section 54.305 in the first place.

Second, the Commission should not artificially limit the safety valve recovery to 50 cents of each dollar a carrier invests in upgrading rural services without clarifying the additional avenues for recovery of the remaining investment. As described above, neither local rates nor intrastate nor interstate access charges are reliable avenues for recovery. State universal service funding would be a natural complement to the federal support mechanism, but few if any state universal service support funds provide this type of support. The Commission

---

[9] Under this rule, as so clarified, the "index year expense adjustment" would be calculated according to current rules as of the end of the first year of operations following the acquisition. These expense and investment records are a matter of historical record with both the carrier and the National Exchange Carrier Association (NECA). In each year commencing with the adoption of the safety valve mechanism, that year's expense adjustment would be compared with the "index year expense adjustment" as described in Appendix D of the RTF Plan.

should therefore: (1) provide support for 100 percent of "meaningful investment" that is not otherwise recoverable either from other universal service mechanisms or from charges for intrastate or interstate services; and (2) encourage states to develop analogous "safety valve" mechanisms in state universal service funds.

Third, the Commission should not "fix" safety valve support in competitive study areas in the same manner as other high cost loop support. Often, when exchanges are purchased from a larger carrier, one or more competitors are already in the market, and have executed interconnection agreements with the former incumbent – agreements that are frequently honored and adopted by the purchaser. In addition, Western Wireless, Smith Bagley, and other carriers are seeking ETC status within the service areas of rural telephone companies at an accelerating pace. Given that it often takes a year or more simply to evaluate and prioritize plant investments that need to be made following an acquisition, this limitation "fixing" safety valve support at one particular point in time would substantially reduce any continuing incentive to invest in rural areas that the RTF Plan otherwise would create.

C. The Commission Should Eliminate the Study Area Waiver Process for Sale and Purchase Transactions.

The Commission should take this opportunity to harmonize its study area boundary freeze with the RTF Plan and any safety valve mechanism it ultimately adopts. Since it froze study area boundaries effective November 15, 1984, the Commission has required companies involved in exchange sale and purchase transactions to obtain a waiver of this freeze as a precondition to closing the transaction. This waiver allows the selling carrier to delete the exchanges from its study area, and the purchasing carrier to add them to an existing study area or to create an entirely new study area. Because the premise of the safety valve mechanism is that the sold or transferred exchanges would be placed in a separate study area within the state,[10] it would be a strange result indeed to require the purchaser to obtain a waiver of Part 36 in order to comply with the rules adopted to implement the RTF Plan.

Furthermore, there is no longer any policy justification for the study area boundary freeze as it applies to sales and transfers of exchanges The Commission froze study area boundaries to prevent carriers from modifying study area boundaries in an attempt to maximize universal service support. The Commission originally required the parties to such waivers to show that all sale and purchase transactions of the parties combined for the year in which the waiver request was filed would not increase the high cost loop support pool by more than one percent.[11]

Since 1997, it has been impossible for acquisitions of exchanges to have any impact whatsoever on high cost universal service support, by the very terms of section 54.305. Furthermore, the RTF has built in additional protection for the fund by capping safety valve support at an "appropriate level," with five percent of overall indexed high cost loop fund support for rural carriers used for illustrative purposes.[12] Accordingly, the Commission should eliminate this waiver process and adopt more streamlined rules that would permit the formation of a new study area, as required by the safety valve mechanism, without obtaining a Commission waiver.

IV. Rapid Action on the RTF Plan Is Necessary.

Over this past three years, despite a lack of meaningful reform in federal regulation, rural telephone companies have increasingly invested in advanced services and sought to launch competitive ventures beyond their historical ILEC regions. These companies

---

[10] *RTF Plan* at Appendix D.

[11] *U S WEST Communications, Inc. and Eagle Telecommunications Inc.*, Memorandum Opinion and Order, 10 FCC Rcd 1771 (1995).

[12] See RTF Plan at Appendix D.

have also become subject to increasing amounts of competition from CLECs. The current rate-of-return interstate access charge rate structure, however, coupled with a universal service support mechanism that was not designed for a competitive environment, hamstrings ILECs in investing in advanced services, in launching out-of-region competitive ventures, and in responding to competitive entry in-region.

Today, implicit universal service support continues to create an ILEC price umbrella in lower-cost portions of ILEC study areas, while higher-cost lines, in many cases, generate insufficient revenue to cover the costs of providing service. In addition, interim policies adopted by the Commission, such as the section 54.305 limit on universal service support that a carrier purchasing access lines may receive and the interim cap on high cost loop support, have now survived far longer than the Commission originally intended. Further delays by the Commission will only exacerbate the problems caused by these interim policies.

Against this backdrop, the work of the RTF is to be commended. The RTF has recommended much-needed changes to the federal universal service support mechanisms for rural carriers. The recommendations are reasonably balanced and should be considered as a whole and acted upon promptly. The RTF's recommendation is comprehensive and was reached through exhaustive deliberation by a group of rural subject-matter experts. Should the Commission delay action on the RTF recommendation, it runs the risk of undermining the work of the RTF and their efforts to remain faithful to the intent of the Act. The future of universal service reform for rural providers should be decided expeditiously for the good of rural consumers and the providers that serve and invest in those markets.

V. Conclusion

For the foregoing reasons, CenturyTel recommends that the Commission quickly adopt the RTF Plan, including a safety valve that will provide additional universal service support for investment in acquired exchanges.

Respectfully submitted,
CENTURYTEL, INC.

Karen Brinkmann
Richard R. Cameron
Latham & Watkins
1001 Pennsylvania Avenue, N.W.
Washington, DC 20004
(202) 637-2200

Counsel for CENTURYTEL, INC.

John F. Jones
Vice President, Government Relations
CENTURYTEL, INC.
100 Century Park Drive
Monroe, Louisiana 71203
(318) 388-9000

DC_DOCS\362936.2 [W97]